U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A- CORP.

DATE: DEC. 15, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an IT solutions provider, seeks to employ the Beneficiary as a senior programmer analyst. It seeks classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent residence.

The petition was initially approved. The Director of the Nebraska Service Center subsequently revoked the approval with a finding of fraud and invalidated the underlying labor certification based on findings that falsified evidence had been submitted to support the Petitioner's claims that it intended to employ the Beneficiary in the job offered and that the Beneficiary was eligible for the immigration benefit.

The Petitioner appealed the decision to us. We remanded the case to the Director for further consideration of the fraud finding and other issues. After issuing a new notice of intent to revoke (NOIR) the initial approval of the petition and receiving the Petitioner's response, the Director issued a decision which again revoked the approval of the petition. Finding numerous discrepancies in the documents pertaining to the Beneficiary's work history, the Director concluded that the Petitioner had not established that the Beneficiary met the work experience requirements of the labor certification and that fraud or willful misrepresentation of a material fact had been committed in the attempt to procure the immigration benefit requested for the Beneficiary.

On appeal, the Petitioner asserts that all alleged inconsistencies in the evidence are explainable, that neither the Petitioner nor the Beneficiary committed fraud or misrepresented a material fact, and that the evidence of record establishes that the Beneficiary met the experience, as well as the educational, requirements for the job.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [Procedure for Granting Immigrant Status]." The associated regulation, 8 C.F.R. § 205.2, provides that any USCIS officer who is "authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner."

II. ANALYSIS

At issue here is whether the Beneficiary has the experience required by the labor certification and whether the Petitioner willfully misrepresented a material fact in the submission of this petition. For the reasons discussed hereinafter, we find that the Petitioner has not resolved the evidentiary discrepancies regarding the Beneficiary's employment history and has not established that the Beneficiary had at least one year of qualifying experience as of the priority date. We also find that the record does not support a finding of fraud or willful misrepresentation of a material fact.

A beneficiary must meet all of the educational, training, and experience requirements of the labor certification by the priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977). In this case, the labor certification requires a master's degree and 12 months of experience in the job offered or as a programmer analyst or equivalent; or a bachelor's degree and six years of experience.

The Beneficiary has a foreign equivalent degree to a U.S. master's degree in a qualifying field of study under the terms of the labor certification.[2] Thus, the Beneficiary meets the minimum

[1] The date the labor certification is filed is called the "priority date." *See* 8 C.F.R. § 204.5(d). The Petitioner must establish that all eligibility requirements for the petition have been satisfied from the priority date onward.

[2] The Beneficiary has a two-year Master of Science in Information Systems and Applications from [redacted] in India, dated February 28, 2006, which followed a four-year Bachelor of Engineering degree from [redacted] dated July 10, 2002.

educational requirement of the labor certification. In the revocation decision, however, the Director found that the Petitioner did not establish that the Beneficiary had the requisite one year of qualifying experience by the priority date of July 22, 2009, due to evidentiary discrepancies.

According to the labor certification, the Beneficiary had experience as a programmer analyst with in California from October 2004 to August 2007, and with in Iowa from August 2007 up to the present (July 2009). The Petitioner's initial evidence included a letter dated May 20, 2010, from its "CEO/COO," stating that the Petitioner, successor-in-interest to had employed the Beneficiary as a programmer analyst since August 2007. As discussed at length below, this letter contradicts the claims made on the labor certification. No documentation of the Beneficiary's alleged employment during the prior time frame of 2004-2007 was submitted with the initial evidence.

Moreover, as stated in the NOIR, a different employment history was provided on a subsequent labor certification filed in 2011 that was submitted to USCIS in connection with a Form I-140, Immigrant Petition for Alien Worker, filed on behalf of the Beneficiary by another petitioner.[3] That labor certification stated that the Beneficiary was employed by in California, from February 2005 to February 2010 (with no mention of any employment with According to the Petitioner, the Beneficiary mistakenly told the other petitioner, when it was preparing the labor certification for the Form I-140 petition it filed on the Beneficiary's behalf in 2011, that he was employed by during that time frame, without realizing that he actually worked for two different This explanation is not persuasive, however, as the Petitioner has not explained why the Beneficiary would know that he worked for two separate corporations when filling out a labor certification in 2009, but would then lack this knowledge when filling out the same form in 2011. This explanation also does not account for the different starting dates (October 2004 versus February 2005) provided on the two labor certifications.

In an attempt to substantiate the claimed employment reported on the labor certification in this case, the Petitioner resubmitted the letter signed by as the "CEO/COO" of the Petitioner stating that the Beneficiary "has been working with us as a full time Programmer Analyst since 08/17/2007." The record indicates that the Beneficiary began working for the Petitioner in February 2010. It appears that the letter may be referencing the Beneficiary's prior employment with which had the same corporate address as the Petitioner and was acquired by the Petitioner pursuant to a purchase agreement dated December 14, 2009. The purchase agreement did not include a separate corporation located in Iowa. The letter is inconsistent with the claim on the labor certification insofar as the letter indicates that the Beneficiary began working for in August 2007, while the labor certification reports that the Beneficiary ended his employment with

[3] That petition (receipt number filed by in Illinois), was withdrawn in 2012.

in August 2007. If the letter from was in fact referring to employment with the Petitioner, rather than the letter would also be inconsistent with the Beneficiary's claimed employment on the labor certification.

Adding to the confusion, the Petitioner submitted an affidavit from an employee in its human resources unit who asserted that he prepared the foregoing letter signed by and "inadvertently" stated that the Beneficiary's experience since August 2007 was at instead of However, neither of those businesses was actually mentioned in the letter and the inconsistencies surrounding the Beneficiary's dates of employment remain.

On appeal, the Petitioner seeks to clarify the Beneficiary's employment history, contending that the employment reported on the labor certification submitted in this case reflects the Beneficiary's true employment history. Specifically, the Petitioner asserts that the Beneficiary was employed by from February 2005 to August 2007, and by from August 2007 to February 2010. However, the documentary evidence submitted by the Petitioner in attempt to corroborate this claim, does not substantiate the claim. In fact the documentary evidence introduces additional discrepancies regarding the Beneficiary's alleged employment history.

For example, there are copies of an IT services contract between and for the one-year period of May 7, 2007, to May 7, 2008, naming the Beneficiary as the consultant providing the services to the end-client, and a series of invoices from billing "[f]or the services rendered by our Consultant [the Beneficiary]" at in Illinois, during the time period from May through December 2007. These documents are inconsistent with the Petitioner's claim on appeal that the Beneficiary ceased to work for in mid-August 2007 and began working for at that time. The alleged starting date for the commencement of the Beneficiary's services to in Illinois (early May 2007), is also inconsistent with the residential information provided by the Beneficiary on a Form G-325A, Biographic Information, prepared in 2012 on which the Beneficiary stated that he resided in Washington, from January to July 2007, before moving to Illinois. It is not clear how the Beneficiary would have been working in Illinois while residing in Washington from May to July 2007.

The Petitioner also submitted a letter from prepared in 2014, which identifies the Beneficiary as an employee of and states that he provided services as a programmer analyst to the end-client, in Illinois, from May 7, 2007, to July 17, 2009. Although this letter does not identify which company was employing the Beneficiary during the contract period, it is again inconsistent with the Beneficiary's residential history as reported on the Form G-325A.

The Petitioner also submitted copies of four apartment leases bearing the signatures of the Beneficiary and his wife whereby they leased apartment premises in Illinois, between

July 2007 and March 2010. While the foregoing documents seem to indicate that the Beneficiary was residing in Illinois from mid-2007 until 2010, the Beneficiary's Form W-2, Wage and Tax Statement from [redacted] for both 2007 and 2008, as well as all of his bimonthly pay statements for the employment period from August 16, 2007, through December 31, 2008, identify the Beneficiary's residence as [redacted] in [redacted] New Jersey. Not until the beginning of 2009 did the Beneficiary's pay statements from [redacted] identify an address in [redacted] Illinois, as his residence. No explanation has been provided for this conflicting documentation, which appears to show that the Beneficiary was residing in New Jersey while claiming to have been working in Illinois for nearly a year and a half.

It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. As discussed in the preceding paragraphs, significant evidentiary inconsistencies regarding the Beneficiary's employment history with [redacted] and [redacted] remain unresolved by the Petitioner, which casts doubt on the employment documentation as a whole.

Based on the numerous unresolved inconsistencies regarding the Beneficiary's claimed qualifying employment, we cannot find that the Beneficiary had at least 12 months of qualifying experience by the priority date, as required by the labor certification. At the same time, we do not find that the evidence in the record supports the Director's finding of fraud or willful misrepresentation of a material fact by the Petitioner or the Beneficiary in this case.

A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). A misrepresentation is an assertion or manifestation that is not in accord with the true facts. For an immigration officer to find a willful and material misrepresentation of fact, he or she must determine that (1) the petitioner or beneficiary made a false representation to an authorized official of the U.S. government, (2) the misrepresentation was willfully made, and (3) the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA (1979). A "material" misrepresentation is one that "tends to shut off a line of inquiry relevant to the alien's eligibility." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

In this case the Director stated in the revocation decision that he found fraud or willful misrepresentation of a material fact. However, he did not specify whether he found fraud or whether he found willful misrepresentation of a material fact, whether the finding applied to the petition, the labor certification, or both, and whether it applied to the Petitioner, the Beneficiary, or both. After

reviewing and discussing the inconsistent statements and evidence submitted in this proceeding with respect to the Beneficiary's employment and residential history, we do not find that they rise to the level of fraud or willful misrepresentation of any material fact in these proceedings. Accordingly, we will withdraw the Director's finding.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the requisite experience to qualify for the job opportunity under the terms of the labor certification and has not resolved many inconsistencies in the evidence of record. Therefore, we will dismiss the appeal. We will also withdraw the Director's finding of fraud or willful misrepresentation of a material fact.

ORDER: The appeal is dismissed.

Cite as *Matter of A- Corp.*, ID# 696382 (AAO Dec. 15, 2017)